UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

JUDY JIEN, *et al.*, Plaintiffs, v. PERDUE FARMS, INC., *et al.*, Defendants.	Case No. 1:19-cv-2521-SAG

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR LACK OF STANDING PURSUANT TO FED. R. CIV. P. 12(b)(1)

The threshold question in this putative class action is simple: if Judy Jien and the other named plaintiffs (collectively, "Plaintiffs") had filed suit in their individual capacities, would they have standing to sue for alleged injuries they did not suffer? The answer is an unequivocal "no," and the fact that Plaintiffs have attempted to sue in representative capacities does not change it. Plaintiffs, hourly workers at chicken processing plants, did not suffer any injuries arising from the alleged suppression of wages paid for salaried positions they never held or at turkey processing plants where they never worked. Consequently, they do not have Article III standing to assert—and the Court lacks subject matter jurisdiction to entertain—claims for injuries ostensibly suffered by individuals who actually held those jobs. Defendants Perdue Farms, Inc., Perdue Foods LLC, Tyson Foods, Inc., Keystone Foods, LLC, Pilgrim's Pride Corporation, Sanderson Farms, Inc., Koch Foods, Inc., Wayne Farms, LLC, Mountaire Farms, Inc., Peco Foods, Inc., Simmons Foods, Inc., Fieldale Farms Corporation, George's, Inc., George's Foods, LLC, Butterball, LLC, Jennie-O Turkey Store, Inc., Cargill Meat Solutions Corporation, Agri Stats, Inc., and Webber, Meng,

Sahl and Company, Inc. d/b/a/ WMS & Company, Inc. ("Defendants") respectfully submit that the Court must dismiss those claims, and dismiss the turkey processing defendants (Butterball, LLC, Jennie-O Turkey Store, Inc., Cargill Meat Solutions Corporation), pursuant to Fed. R. Civ. P. 12(b)(1) *before* permitting Plaintiffs' sprawling conspiracy claims to proceed to discovery.

BACKGROUND

The five named plaintiffs in this action are former hourly employees at chicken processing plants. Judy Jien, Kieo Jibidi, Elaisa Clement, and Emily Earnest were deboners at chicken processing plants, and Glenda Robinson was employed in the day pack department at a chicken processing plant. Not surprisingly, then, their initial complaints alleged a conspiracy to fix the wages of hourly workers at chicken-processing plants. *See* Class Action Complaint, *Jien v. Perdue Farms, Inc.*, No. 19-cv-02521 (D. Md. Aug. 30, 2019), ECF No. 1; Class Action Complaint, *Earnest v. Perdue Farms, Inc.*, No. 19-cv-02680 (D. Md. Sept. 12, 2019), ECF No. 1; Class Action Complaint, *Robinson, v. Tyson Foods, Inc.*, No. 19-cv-02960 (D. Md. Oct. 9, 2019), ECF No. 1. After consolidating their claims, Plaintiffs filed an Amended Consolidated Complaint ("ACC"), which purported to expand the scope of the alleged conspiracy to cover wages paid to individuals who held salaried positions and who worked at turkey processing plants. *See* Am. Consolidated Compl., ECF No. 258.

Defendant Tyson Foods, Inc. ("Tyson") and certain of its affiliates named as defendants in the ACC moved to dismiss the complaint for two principal reasons: first, because the ACC did not distinguish between the corporate affiliates named in the complaint and therefore failed to provide adequate notice of the allegations against individual defendants; and second, because Plaintiffs, who were hourly chicken processing plant employees, lacked standing to bring claims on behalf of individuals who held salaried positions and who worked at turkey processing plants. Mem. Supp. Tyson's Mot. to Dismiss, ECF No. 351-1.

In its opinion dismissing the ACC with respect to most of the defendants, the Court focused on Tyson's first argument and did not reach the second. Mem. Op., Sept. 16, 2020, ECF No. 378. Plaintiffs then filed the Second Amended Consolidated Complaint ("SACC"), ECF No. 386, which purported to identify the specific entities that participated in the alleged conspiracy. But the SACC did not add any named plaintiffs who actually held salaried positions despite the fact that the complaint explicitly acknowledges important differences between hourly and salaried jobs. For example, Plaintiffs allege that hourly and salaried employees have distinct characteristics that affect their employment and compensation. *Compare, e.g.,* SACC ¶ 163 (alleging that many hourly workers "do not speak English and lack significant education") *with* ¶ 168 ("only educated, skilled and experienced individuals can obtain salaried positions"). Nor did it add any plaintiffs who worked at turkey processing plants, which are wholly different facilities from chicken processing plants—a point made that much more obvious by the map contained in the SACC, which shows the concentration of chicken processing plants in the South and the dispersion of turkey processing plants across the Midwest. SACC ¶ 142. Because Plaintiffs did not fix these fundamental defects in the SACC, Defendants respectfully submit that their claims on behalf of salaried workers and turkey processing plant employees must now be dismissed.

ARGUMENT

At the outset of this litigation Plaintiffs bear the burden of demonstrating that that they have Article III standing to assert—and this Court has jurisdiction to hear—all of the claims in their complaint. *In re Interior Molded Doors Antitrust Litig.,* No. 3:18-CV-00718-JAG, 2019 WL 4478734, at *12 (E.D. Va. Sept. 18, 2019); *see also Cent. Wesleyan College v. W.R. Grace & Co.*, 6 F.3d 177, 188 (4th Cir. 1993). To cross this constitutional threshold, Plaintiffs were required to allege (1) that they suffered an injury in fact; (2) that their injury is fairly traceable to the challenged conduct; and (3) that their injury has some likelihood of redressability through this suit. *Lujan v.*

Defs. of Wildlife, 504 U.S. 555, 560 (1992). Plaintiffs have not satisfied even the first of these requirements for individuals who held salaried positions or who worked in turkey processing plants, and the fact that Plaintiffs filed a class action complaint does not dispense with their burden to show that they had standing to assert each of the claims asserted in it. *Schlesinger v. Reservists Committee to Stop the War,* 418 U.S. 208, 210-15 (1974).

I. Plaintiffs Do Not Have Standing to Assert Claims For Injuries They Did Not Suffer

According to the SACC, Defendants engaged in a broad conspiracy to suppress wages paid to a variety of individuals, including those who receive hourly wages at chicken processing plants; those who receive salaried wages at chicken processing plants; those who receive hourly wages at turkey processing plants; and those who receive salaried wages at turkey processing plants. Although they allege a conspiracy to suppress the compensation paid to all of these individuals, Plaintiffs could only have suffered injuries as hourly workers at chicken processing plants because those are the only positions they ever held. They could not have suffered any injuries as salaried employees of chicken or turkey processing plants, or as hourly workers at turkey processing plants, and therefore lack standing to assert any claims relating to those positions. Because standing turns on whether the plaintiff is "the proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable," *In re Interior Molded Doors*, 2019 WL 4478734 at *12 (citing *Flast v. Cohen*, 392 U.S. 83, 99 (1968)), Plaintiffs' claims concerning salaried employees and turkey processing plant employees must be dismissed.

The court confronted a similar scenario and reached the same conclusion in *Kjessler v. Zaappaaz, Inc.*, No. CV 4:18-0430, 2019 WL 3017132 (S.D. Tex. Apr. 24, 2019). In that case, plaintiffs filed a class action complaint alleging that the defendant manufacturers of customized promotional products engaged in an overarching conspiracy to fix the prices of custom wristbands, pin buttons, and lanyards. The named plaintiffs purchased custom wristbands and pin buttons, but

none of them purchased lanyards. The defendants moved to dismiss the lanyard claims on grounds that the named plaintiffs had not suffered any injury with respect to lanyards and therefore lacked standing to pursue any claims with respect to them. After analyzing fundamental standing principles in single plaintiff and class action cases, the court observed that it is "undisputed that Plaintiffs have standing to assert claims based on their own alleged injuries—*i.e.*, the economic harm from purchasing over-priced wristbands or pin buttons." 2019 WL 3017132, at *6. The court explained that any economic injury the named plaintiffs suffered when purchasing wristbands and pin buttons was "similar" to any injury suffered by individuals who actually purchased lanyards. *Id.* But that similarity did not suffice to establish the named plaintiffs' standing to bring lanyard price-fixing claims against the defendants, and the court dismissed those claims for lack of Article III standing. *Id.* at *8.

Courts routinely grant motions to dismiss claims for lack of standing if the plaintiffs have not alleged that they suffered each of the types of injuries covered by their claims. For example, in *Pearson v. Target Corp.*, No. 11 CV 7972, 2012 WL 7761986 (N.D. Ill. Nov. 9, 2012), the plaintiff alleged that the defendant engaged in deceptive business practices concerning two dietary supplements. Because the plaintiff only purchased one of the supplements, the court found that he lacked standing to assert any claims with respect to the other and dismissed any claims relating to it. *Id.* at 1. Similarly, in *In re AIG Advisor Grp.*, No. 06-cv-1625, 2007 WL 1213395, at *5 (E.D.N.Y. Apr. 25, 2007), *aff'd on other grounds sub nom. In re AIG Advisor Grp. Sec. Litig.*, 309 Fed. Appx. 495 (2d Cir. 2009), the plaintiffs claimed that defendant made fraudulent representations about the prospects of nineteen different investment funds. Because the plaintiffs had only invested in sixteen of those funds, the court found that they could not claim an injury from the other three and dismissed any claims relating to them. 2007 WL 1213395, at *3-6. This Court should reach the same conclusion here.

II. Plaintiffs Cannot Rest Their Class Action Claims on Injuries Allegedly Suffered By Unnamed Class Members

As the Supreme Court explained in *Lewis v. Casey,* "standing is not dispensed in gross." 518 U.S. 343, 358 n.6 (1996). The fact that "a suit may be a class action . . . adds nothing to the question of standing, for even named plaintiffs who represent a class 'must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.'" *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 40, n. 20 (1976) (quoting *Warth v. Seldin,* 422 U.S. 490, 502 (1975)); *see also* 5 James Wm. Moore *et al.,* Moore's Federal Practice – Civil § 23.63(1)(b) (noting that the "named plaintiff in a class action must meet all the jurisdictional requirements to bring an individual suit asserting the same claims, including standing"); 1 Newberg on Class Actions § 2:5 (5th ed. 2015) ("In a class action suit with multiple claims, at least one named class representative must have standing with respect to each claim. A finding that no class representative has standing with respect to a given claim requires dismissal of that claim.").

These principles provided the foundation for the *Kjessler* court's dismissal of lanyard claims since none of the named plaintiffs actually purchased those products. Quoting *Blum v. Yaretzky,* 457 U.S. 991, 999 (1982), the *Kjessler* court explained that "a plaintiff who has been subject to injurious conduct of one kind" does not "possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject." *Kjessler,* 2019 WL 3017132 at *6. The import of that rule was clear: the named representatives did not have standing to seek relief—whether for themselves or for unnamed class members—for any injuries they did not suffer, and any claims relating to them had to be dismissed at the outset of litigation. *Id.* at *8; *see also In re Interior Molded Doors,* 2019 WL 4478734, at *12 (explaining that an antitrust "claim cannot be asserted on behalf of a class unless at least one named plaintiff

has suffered the injury that gives rise to that claim" and granting motion to dismiss certain state law claims); *Los Gatos Mercantile, Inc v. E.I. DuPont De Nemours & Co.*, No. 13-CV-01180-BLF, 2015 WL 4755335, at *15 (N.D. Cal. Aug. 11, 2015) (dismissing certain class action claims because the named plaintiff lacked standing to assert claims for products it had not purchased, and noting that "the threshold question" of standing must precede—and is distinct from—the merits of a claim).

Like the named plaintiffs in *Kjessler,* who never purchased lanyards and therefore were not injured by any price-fixing with respect to them, the Plaintiffs in this case never worked in salaried positions or at turkey processing plants and could not have been injured in those roles. At best, Plaintiffs' positions might be described as "similar" to those of the unnamed class members they seek to represent. But any such similarity does not suffice to establish Plaintiffs' standing and the Court's power to exercise subject matter jurisdiction over their class action claims; rather, Plaintiffs must establish a case or controversy between themselves and Defendants for each of those claims. *Kjessler,* 2019 WL 3017132, at *6-8; *In re Interior Molded Doors,* 2019 WL 4478734, at *12 (citing *Cent. Wesleyan*, 6 F.3d at 188, and quoting *Blum,* 457 U.S. at 1001 n.13). Plaintiffs cannot do so, and any claims for injuries purportedly suffered by individuals in salaried positions that Plaintiffs did not hold and in turkey processing plants where Plaintiffs did not work must be dismissed.

III. The Court Should Exercise Its Duty to Control the Scope of Discovery by Dismissing Claims That Cannot be Substantiated with Any Amount of Discovery

This Court recently recognized its duty to control the scope of discovery when it is clear from the face of a complaint that discovery cannot cure a foundational defect in a class action claim. *Rosedale v. CarChex LLC*, No. SAG-19-2780, 2020 WL 998740, at *4-5 (D. Md. Mar. 2, 2020); *Rosedale v. CarChex LLC*, No. CV SAG-19-2780, 2020 WL 6801922, at *4 (D. Md. Nov.

19, 2020). No amount of discovery can fix the fact that Plaintiffs, hourly employees in chicken-processing plants, do not have standing to sue for injuries allegedly suffered by individuals who held salaried positions or worked at turkey-processing plants.

Permitting Plaintiffs to conduct discovery about those positions or plants would serve no purpose but to increase the cost and extent of discovery for all Defendants. As the Supreme Court explained in *Twombly v. Bell Atlantic Corp.,* "the costs of modern federal antitrust litigation and the increasing caseload of the federal courts counsel against sending the parties into discovery" absent a reasonable likelihood that discovery will substantiate the allegations in a complaint. 550 U.S. 544, 558 (2007) (internal quotation marks omitted). This is certainly the type of "massive factual controversy" about which the *Twombly* court was concerned, *id*., and there is a *zero* percent chance that discovery will substantiate Plaintiffs' claims to have been injured in positions they did not hold and in plants where they did not work.

CONCLUSION

Plaintiffs lack Article III standing to pursue any claims—individual or class—relating to salaried positions and turkey processing plant jobs, and those claims must be dismissed *before* sending the parties into expensive discovery that cannot cure these fundamental defects in Plaintiffs' case.

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